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Foreword

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FOREWORD

In 1910, the Intercollegiate Athletic Association of the United States was rechristened as the National Collegiate Athletic Association, or NCAA as it is known today. Since then, the scope and popularity of college sports have grown dramatically. This growth has placed important values like amateurism, academic standards, student rights, and equal access in conflict with practical realities like competitive pressure and fiscal imperatives. Not surprisingly, interested parties have often used the legal system to resolve these conflicts.

On October 15, 2010, with the help of our sponsor Ropes & Gray, Boston College Law School and the *Boston College Law Review* held an all-day symposium that examined some of the legal issues raised by the NCAA's growth. The program featured a lunchtime panel during which Roy Kramer, former SEC Commissioner and founder of the Bowl Championship Series (BCS), and Matthew Sanderson, executive director of PlayoffPac, discussed postseason college football, the BCS, and the National Championship.¹ Jeremy Schaap of ESPN moderated. The program also included numerous presentations by professors, journalists, and athletic directors in four panels: (1) The NCAA and Gender, (2) The NCAA and Students, (3) The NCAA as a Commercial Enterprise, and (4) The NCAA and Constitutional Law.

This issue of the *Boston College Law Review* contains 7 of the presented papers. Together, these papers offer contrasting and valuable perspectives on legal challenges created by the growth of college sports. Not surprisingly, these challenges arise because NCAA member institutions, particularly those competing in Division 1, face incredible pressure to win and—in a few sports—make money.

For example, the NCAA must figure out how to discourage people and institutions from breaking rules that preserve amateurism and fair play. In that vein, Professor Maureen Weston considers a number of recent cases of NCAA discipline, concluding that NCAA sanctions are both over and underinclusive.² Professor Alfred Yen studies the problem of regulating the early recruitment of high school underclassmen, arguing that simple prohibitions against undesirable

¹ Video of the symposium is available at http://www.bc.edu/schools/law/newsevents/events/conferences/ncaa_symp_video.html.

² Maureen A. Weston, *NCAA Sanctions: Assigning Blame Where It Belongs*, 52 B.C. L. REV. 551 (2011).

recruiting practices are unlikely to be effective.³ More radical, unconventional methods of regulation will be needed if present practices are to be changed.

Similarly, the breathtaking popularity of NCAA sports raises questions about whether every commercial practice undertaken by NCAA institutions is truly supported by the law. For example, as Professor Mike McCann shows us, commercial arrangements like the Bowl Championship Series are potentially vulnerable to antitrust scrutiny.⁴ Similarly, Professor Joseph Liu writes about how weaknesses in the foundation of rights of publicity call into question many of the licensing practices associated with the NCAA, its member institutions, and other modern sports teams.⁵

The financial pressures associated with money-making NCAA sports also make it difficult for NCAA member institutions to offer equal athletic opportunities to all athletes, including women. As Professor Nancy Hogshead Makar writes, the financial demands of operating Division 1 men's basketball and football teams drain resources away from other sports.⁶ She worries that, in the long run, the budget for women's sports and non-revenue producing men's sports will face elimination in the future. Professor Erin Buzuvis has a somewhat different take on this problem, arguing that the NCAA should support the expansion of properly designed competitive cheer programs as a way to combat gender inequity in NCAA sports.⁷

Finally, to top it all off, the NCAA itself must worry about its ultimate power and authority to regulate college sports, conduct investigations, and punish rule breakers. Professor Vikram Amar provides a finely detailed, nuanced analysis of the state action problem and uses that analysis to consider how and whether courts might NCAA action as state action subject to constitutional limitation.⁸

³ Alfred C. Yen, *Early Scholarship Offers and the NCAA*, 52 B.C. L. REV. 585 (2011).

⁴ Michael A. McCann, *Antitrust, Governance, and Postseason College Football*, 52 B.C. L. REV. 517 (2011).

⁵ Joseph P. Liu, *Sports Merchandising, Publicity Rights, and the Missing Role of the Sports Fan*, 52 B.C. L. REV. 493 (2011).

⁶ Nancy Hogshead-Makar, *Hurricane Warning Flag for Olympic Sports: Compliance Practices in Biediger v. Quinnipiac University Signal a Risk to Women's and Men's Olympic Sports*, 52 B.C. L. REV. 465 (2011).

⁷ Erin E. Buzuvis, *The Feminist Case for the NCAA's Recognition of Competitive Cheer as an Emerging Sport for Women*, 52 B.C. L. REV. 439 (2011).

⁸ Vikram David Amar, *The NCAA as Regulator, Litigant, and State Actor*, 52 B.C. L. REV. 415 (2011).

In closing, I would like to take a few moments to thank various individuals and institutions that helped make this symposium possible. Our sponsor, Ropes & Gray, provided financial support and encouragement. Jacki Bideau and Elizabeth Johnston took care of the many items large and small that make a conference successful. The *Boston College Law Review's* staff painstakingly edited the articles presented here. Last, but not least, my colleagues Richard Albert, Joseph Liu, and David Olson helped create the symposium's structure and sharpened its intellectual focus. Without them, none of this would have happened.

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